

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 520 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

TELECOMMUNICATION CONSULTANTS INDIA LTD.

Versus

PATEL CONSTRUCTION CO.

Appearance:

MR BS PATEL for Petitioner
None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 17/12/1999

ORAL JUDGEMENT

1. The order under challenge in this revision application at the instance of the defendant - petitioner is of City Civil Court No. 24, Ahmedabad dated 24th December, 1998 in Civil Misc. Application NO.126 of 1997 below Ex.1. The summary suit NO. 1117 of 1995 was filed by the plaintiff respondent for sum of Rs.3,66,665-67.

This suit was decreed by the court below. The defendant filed an application purporting under Order 37 Rule 4, C.P.C. to set aside the decree on the ground mentioned therein. At the time of hearing in the application aforesaid, it was reported to the court at the Bar that in case the defendant - petitioner herein deposits a sum of Rs. 1 lac in the court, the plaintiff - respondent herein has no objection if court set asides the decree. So the plaintiff - respondent was agreeable for setting aside of the decree passed by the court below on the condition that the defendant - petitioner deposits Rs. 1 lac in the court. I find from the order impugned in this civil revision application that during the negotiation proceedings a statement of account is given by the plaintiff - respondent to the defendant petitioner and as per that account, a sum of Rs. 1,67,000/- and odd is due of the plaintiff - respondent against the defendant petitioner. The counsel for the plaintiff - respondent also fairly conceded to the correctness of the statement aforestated. The application filed by the defendant petitioner was granted on condition of depositing Rs. 1 lac in the court. Hence, this revision application before this court.

2. Learned counsel for the defendant - petitioner contended that the learned trial court has committed serious illegality in putting the condition of depositing of Rs. 1 lac as condition for setting aside the ex parte decree. It is submitted that the defendant petitioner has a right to apply for unconditional leave to defend in the suit. The defendant - petitioner has good case in defence and the court would have granted to it unconditional leave to defend the suit. That stage has not been reached and much earlier to that stage this deposit of Rs. 1 lac has been ordered to be passed and it results in taking away the right of the defendant petitioner to apply for unconditional leave to defend the suit. Lastly, it is contended that the plaintiff respondent filed the suit for recovery of Rs. 3,63,666/= while in the statement of accounts it was their case that Rs. 1,67,416-60 is due which clearly shows that the claim of the plaintiff - respondent was not bonafide. Summing up his contention the learned counsel for the petitioner submits that in case this court is not inclined to interfere in this revision application then the petitioner may be granted reasonable time to deposit sum of Rs. 1 lac in the court.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

4. The decree has been passed ex-parte and it is open to the court below to set aside it on conditions. It is true that originally the suit was filed for Rs.3,66,665-67 and after decree of the suit, there were some talks of settlement between the parties and accordingly the plaintiff - respondent appears to have agreed to accept Rs. 1,67,000/- and odd towards the full and final settlement of the claim. That does not mean that what initially the plaintiff - respondent claimed in the suit is not bonafide. First and foremost principle of settlement is give and take and as a result thereof certainly the claim what is made by the plaintiff respondent may not be acceptable to the defendant respondent and to settle the dispute it may have reduced the claim. So the contention raised by the learned counsel for the petitioner is hardly of any substance and merits.

5. It is not the case where the defendant petitioner has a right of setting aside of the ex-parte decree. The court has taken into consideration all the aspects of the matter and particularly the consent given by the plaintiff - respondent for setting aside of the ex- parte decree subject to condition of depositing Rs. 1 lac by the defendant - petitioner in the court. Then the order has been passed. From the order of the learned trial court, I do not find anything that where the defendant petitioner has opposed of imposing any condition for depositing of the amount. In fact the defendant petitioners appears to have been in agreement with the consent of the plaintiff - respondent for restoration of the suit on depositing of Rs. 1 lac in the court. If we go by further facts that on compromise Rs. 1,67,000/and odd is the amount due and if this condition of depositing of Rs. 1 lac has been ordered it is not illegal. Moreover, I fail to see if the order of the learned trial court is allowed to stand how it will occasion any failure of justice or will cause any irreparable injury to the petitioner. It is not the right of the defendant petitioner to get unconditional leave to defend. At the time of granting of leave to defend also, the court can put reasonable condition.

6. As a result of the aforesaid discussion, I do not find any illegality much less it can not be said to be a case where the learned trial court has committed any material irregularity in exercise of its jurisdiction in passing of the impugned order which calls for the interference of this court under section 115 C.P.C. Otherwise also the proviso to sub-rule-1 of section 115,

C.P.C. bars this revision application in this court. Learned counsel for the petitioner has failed to show in case this order is allowed to stand how it will occasion any failure of justice or will cause any irreparable injury to the petitioner.

7. In the result, this revision application fails and the same is dismissed. However, in the interest of justice, the petitioner is granted two months time to deposit the amount of Rs. 1 lac in the court below on condition that in case on or before 19th January, 2000, this amount is not deposited the Civil Misc. Application No. 126 of 1997 filed by the defendant - petitioner in the court below shall stand dismissed automatically without reference to the court. Rule is discharged subject to the indulgence granted. Interim relief, if any, granted by this court stands vacated. As no body has put appearance for the respondent, no order as to costs.

zgs/-